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October 5, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

Ms. Rosalind K. Allen, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Re: PR Docket No. 93-253, Ex parte Presentation

Dear Ms. Allen:

On September 21, 1995, RAM Mobile Data USA Partnership ("RMD") submitted an Emergency Petition for Reconsideration and/or Waiver of the Activity Rules in the above referenced docket. Since that date, RMD has been working with the staff to try to arrive at revised activity rules and an eligibility verification format that addresses the concerns raised by the staff with respect to RMD's petition. These efforts are reflected in two recent ex parte presentation filings submitted by this office on behalf of RMD on September 29, 1995, and October 2, 1995. Despite these efforts, it is now RMD's understanding from the staff that the Commission intends to deny RMD's petition.

Given the progress that had been made and the amount of work that has been done on this issue over the last ten days -- not only by RMD but we understand and appreciate by you and several members of the Commission's staff -- RMD is at a loss to understand why the Commission would retain activity rules, the essence of which were never submitted for public comment, and which, taken in the best light, incentivize those interested in bidding on encumbered blocks to engage in extensive bidding on unwanted licenses to preserve any reasonable flexibility to bid on less encumbered blocks, when a reasonable alternative is available that would resolve this dilemma without any harm to any prospective bidder.

For the record, in this regard, we are submitting with this letter a proposed activity rule and eligibility form, each slightly modified from the "working drafts" that we have submitted over the last few days in the ex parte filings referred to above. Obviously, we would hope that this proposal would be given favorable

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consideration by the Commission. To the extent, however, that a decision is already made, favorable or not, so that the record will be clear, we request prompt action on the petition and the detailed proposals that have been subsequently submitted.

Pursuant to the Commission's rules, an original and one copy of this letter and two copies of the enclosures are also being submitted to the Secretary's office as an ex parte filing in this docket.

Respectfully Submitted,



Jonathan L. Wiener

Enclosures

cc: Chairman Reed Hundt
Hon. James Quello
Hon. Andrew C. Barrett
Hon. Susan Paula Ness
Hon. Rachelle B. Chong
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SUGGESTED NEW SECTION II.D TO BIDDING PROCEDURES

D. INCREASE IN ACTIVITY UNITS

In stage 2 or 3 of the auction, each “eligible bidder” will, upon its request (to be submitted contemporaneously with its bids in the same round), be allowed to increase its activity units by the amount “necessary” for it to bid on a “less encumbered block,” if all of the following conditions are met:

- (1) In the immediately preceding round of bidding, the requesting bidder was active on a “more encumbered block” in the same MTA (the “Active Block”);
- (2) The requesting bidder is not, at the time of the request, the high bidder for the Active Block;
- (3) The high bid for a “less encumbered block” in the same MTA (the “Replacement Block”) is lower than the high bid for the Active Block by an amount that is equal to or greater than the “de minimus” standard;
- (4) With its request for additional activity units (and subject to its grant), the requesting bidder makes a bid for the Replacement Block that meets or exceeds the minimum acceptable bid for that block;
- (5) The requesting bidder has insufficient available activity units to enable it to bid on the Replacement Block and all of the other licenses for which it is active in the same round;
- (6) The requesting bidder would have had sufficient activity units to enable it to bid on the Active Block and all of the other licenses (not counting the Replacement Block) for which it is active in the same round; and
- (7) The total of the bidder’s activity units upon the grant of the additional activity units requested does not exceed the activity unit level the bidder had at the start of the auction.

As used in this Section II.D, the following terms have the following meanings:

An “eligible bidder” means a bidder who meets the criteria set forth in conditions (1) through (7) above and who requests an increase in its activity units.

"Necessary" means the difference between (i) the amount of activity units an eligible bidder needs to support its activity in the round during which its request is made, including to make the bid(s) identified in condition (4) above, less (ii) the amount of activity units held by that bidder at the time of the request. An increase in activity units is not "necessary" if the amount of activity units in (ii) exceeds the amount in (i).

A "less encumbered block" means a license that has more activity units associated with it than the "more encumbered block" in the MTA to which it is being compared.

A "more encumbered block" means a license that has less activity units associated with it than the "less encumbered block" in the MTA to which it is being compared.

The "de minimus" standard means an amount equal to the total of two minimum bid increments (measured at the time that a request for additional activity units is made) for the Active Block.

Bidder(s) may make requests for additional activity units as to one or more licenses at any time that the conditions set forth above are met. In case of multiple requests submitted by the same bidder in the same round, conditions (1) through (4) shall be calculated on a license-by-license basis for each request and conditions (5) through (7) shall be calculated on an aggregate basis for all of the requests submitted in the same round by the same bidder.

An example of the application of this rule is as follows. At the beginning of stage 2, Bidder "X" had the high bid for Block A in New York with a bid of \$50,000. In the next round, another bidder bids \$200,000 for this Block. In that same round, the high bid for the "less encumbered block," Block B, was \$60,000. As long as the minimum bid increments have not been varied by the Commission from the general standard stated in Section I.A of these Auction Procedures,* the difference is more than "de minimus" (in this example, because the activity units associated with Block A are 1,012,525, the "de minimus" standard is \$10,125.25). Accordingly, if requested and if "necessary," Bidder "X" would be granted the "necessary" number of additional activity units to bid on Block B.

* Based upon the preliminary 900 MHz SMR Bidder Package recently released by the Commission's staff.

**INCREASED ACTIVITY UNITS
ELIGIBILITY FORM (PART A)**

(For each "Replacement Block" for which an increase in activity units is requested, a separate Part A of this form must be completed.)

IDENTIFY APPLICABLE MTA AND BLOCKS

1. What is the MTA for which you seek additional activity units to make a bid? _____
2. Were you "active" on a Block in that MTA in the preceding round? If yes, continue. If no, not eligible. _____
3. Identify the following concerning the Block on which you were active ("Active Block"):
 - (a) the ID number of the Active Block. _____
 - (b) the number of activity units assigned to Active Block. _____
 - (c) the minimum bid increment for Active Block in this round. \$ _____
4. Are you now the high bidder for Active Block? If no, continue. If yes, not eligible. _____
5. What is the ID number of the Block in MTA specified in line 1 on which you want to bid in the next round ("Replacement Block"). _____

REPLACEMENT BLOCK MUST HAVE MORE ACTIVITY UNITS THAN ACTIVE BLOCK

6. Identify the number of activity units assigned to Replacement Block. _____
7. Subtract line 3(b) from line 6. _____
8. If line 7 is greater than 0, continue. If no, not eligible.

BID DIFFERENTIAL MUST BE AT LEAST TWICE AS LARGE AS MINIMUM BID INCREMENT

9. How much is the current high bid for Active Block? \$ _____
10. How much is the current high bid for Replacement Block? \$ _____
11. Subtract line 10 from line 9. \$ _____
12. Multiply the amount identified in line 3(c) by 2. \$ _____
13. Subtract line 12 from line 11. \$ _____
14. If line 13 is equal to or greater than 0, continue. If not, not eligible.

BID FOR REPLACEMENT BLOCK MUST MEET OR EXCEED MINIMUM ACCEPTABLE BID

15. What is the minimum acceptable bid for Replacement Block in this round? \$ _____
16. What is your bid for Replacement Block in this round? \$ _____
17. Subtract line 16 from line 15. \$ _____
18. If the amount identified on line 17 is equal to or greater than 0, continue to Part B of this form. If not, not eligible.

INCREASED ACTIVITY UNITS
ELIGIBILITY FORM (PART B)

(A single Part B should be submitted covering all Replacement Blocks for which an increase in activity units is sought in this same bidding round and for which the conditions stated in Part A are met.)

CURRENT ACTIVITY UNIT LEVEL IS INSUFFICIENT TO BID ON REPLACEMENT BLOCK(S) AND OTHER BLOCKS

1. What is the total number of activity units represented by Replacement Block(s) and all of the other Blocks on which you are active in this round? _____
2. What is your current eligibility level? _____
3. Subtract line 2 from line 1. _____
4. If the amount identified in line 3 is greater than 0, continue.
If not, not eligible.

CURRENT ACTIVITY UNIT LEVEL IS SUFFICIENT TO BID ON ACTIVE BLOCK(S) AND OTHER BLOCKS

5. What is the total number of activity units represented by Active Block(s) and all of the other Blocks (excluding Replacement Blocks) on which you are active in this round? _____
6. Subtract line 5 from line 2. _____
7. If the amount identified in line 6 is greater than or equal to 0, continue. If not, not eligible.

INCREASED ACTIVITY UNIT LEVEL CANNOT EXCEED LEVEL AT BEGINNING OF AUCTION

8. What is the amount of activity units you had at the start of the auction? _____
9. Subtract line 1 from line 8. _____
10. If the amount identified in line 9 is greater than or equal to 0, you are entitled to the activity units identified in line 3.